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**IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO DIVISION

FLATWORLD INTERACTIVES LLC

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. 3:12-01956-WHO (EDL)

**JOINT CASE MANAGEMENT
 STATEMENT**

1 Pursuant to the June 27, 2013 Reassignment Order and Order Requiring Case
2 Management Statement, the parties hereby respectfully submit the following joint case
3 management statement.

4
5 **1. Date the Case Was Filed**

6 FlatWorld filed this case on April 19, 2012.

7
8 **2. List or Description of Each Party**

9 The plaintiff, and counterclaim defendant, in this case is FlatWorld Interactives LLC.
10 FlatWorld is a limited liability company organized under the laws of the Commonwealth of
11 Pennsylvania and having its principal place of business in Philadelphia. FlatWorld designs and
12 sells interactive digital media displays for museums, zoos, and like venues.

13 The defendant, and counterclaim plaintiff, in this case is Apple Inc. Apple is a
14 corporation organized under the laws of the State of California and having its principal place of
15 business at 1 Infinite Loop, Cupertino, California, 95014. Apple designs and sells personal
16 computers and other consumer electronic products.

17
18 **3. Summary of Claims, Counter-Claims, Cross-Claims, and Third-Party
Claims**

19 FlatWorld has asserted that certain features of several Apple products, including the
20 iPhone, iPad, iPod touch, iPod Nano (6th and 7th generations), certain MacBook Pro, MacBook
21 Air, MacBook, Mac Pro, and Mac Mini, computers, and the Magic Mouse, and Magic Trackpad,
22 infringe various claims of U.S. Patent No. RE43,318 ("the '318 patent"). FlatWorld has claimed
23 that this infringement is willful and has requested an award of monetary damages from Apple.
24 FlatWorld further seeks a declaration that the present case is exceptional, and an award of fees
25 and costs.

26 Apple seeks a declaration that the '318 patent is invalid and not infringed by Apple's
27 products. Apple has also asserted several affirmative defenses to FlatWorld's patent
28

1 infringement claim, including a defense that the '318 patent is invalid by reason of FlatWorld's
2 unclean hands.

3 4 **4. Brief Description of Events Underlying This Action**

5 As noted above, this action arises from FlatWorld's assertion that various Apple products
6 infringe certain claims of the '318 patent. These claims relate generally to gesture interaction
7 with a user interface.

8 9 **5. Description of Relief Sought and Damages Claimed**

10 FlatWorld seeks damages adequate to compensate it for Apple's ongoing infringement of
11 the '318 Patent, in an amount not less than a reasonable royalty. The reasonable royalty will be
12 calculated based upon the factors and methodology set forth in *Georgia-Pacific Corp. v. U.S.*
13 *Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), and will be supported by expert
14 testimony. FlatWorld is unable to calculate its damages at this time because it does not have
15 discovery quantifying Apple's sales, costs, and margins as to at least the presently accused
16 products, nor does it have discovery regarding Apple's in-bound and out-bound licensing and
17 royalties.

18 FlatWorld also seeks a permanent injunction enjoining Apple, its officers, directors,
19 agents, servants, affiliates, employees, successors, assigns, divisions, branches, subsidiaries,
20 parents and all others acting in active concert therewith from infringing and/or inducing others to
21 infringe or contribute to the infringement of the '318 Patent.

22 FlatWorld seeks an award of both prejudgment and post judgment interest under 35
23 U.S.C. § 284.

24 FlatWorld seeks an award of increased damages under 35 U.S.C. § 284, in an amount not
25 less than three times the amount of actual damages awarded to FlatWorld.

26 FlatWorld seeks an order declaring this case exceptional under 35 U.S.C. § 285 and an
27 award of reasonable attorney's fees.

1 Apple seeks as relief a declaration that each asserted claim of the '318 patent is invalid
2 and not infringed. Apple further seeks as relief a declaration that this case is exceptional and an
3 award of its fees and costs.

4 **6. Status of Discovery**

5
6 Discovery is underway, and Judge White previously referred all discovery disputes to
7 Magistrate Judge Laporte. The parties have each served, and responded to, several sets of
8 requests for production of written documents as well as interrogatories, including contention
9 interrogatories.

10 Apple has taken the Rule 30(b)(6) deposition of FlatWorld, through the inventor of the
11 '318 patent, Slavoljub Milekic, with respect to certain claim construction issues. Claim
12 construction discovery is closed. Apple has also taken third-party discovery of several parties
13 relating primarily to its pending motion for disqualification. For instance, Apple has sought
14 written and deposition discovery from the prosecuting attorney for the '318 patent, Gordon
15 Nelson, along with several entities allegedly involved in assisting FlatWorld in monetizing the
16 '318 patent, including Joshua Slavitt, Vanja Buvac, Daniel Golub, and the Rule 30(b)(6)
17 designees of the firm Hangley Aronchick and the Rembrandt IP entity. FlatWorld has taken the
18 Rule 30(b)(6) deposition of Morgan, Lewis & Bockius, a firm that serves as Apple's outside
19 counsel on other matters, on issues relating to Apple's pending motion for disqualification.
20 Other than Professor Milekic's deposition and less than an hour of Mr. Nelson's deposition, there
21 have been no depositions on the merits.

22 Judge White declined to adopt any deadlines after claim construction, accordingly, the
23 Court has not imposed a discovery cutoff date. The parties have not agreed to any modifications
24 to the discovery limits set forth in the Federal Rules of Civil Procedure, except as follows. The
25 parties have agreed that each side will be limited to a total of 70 hours of deposition testimony of
26 the opposing party pursuant to Rules 30(b)(1) and 30(b)(6), of which no more than 14 hours may
27 be Rule 30(b)(6) testimony of the opposing party. Third-party and expert depositions do not
28

1 count towards this limit.

2 Following motion practice before Magistrate Judge Laporte, Judge Laporte ruled that the
3 parties should refer their dispute regarding the production of source code to a special master. On
4 May 20, 2013, the parties jointly proposed Professor John Canny of the University of California,
5 Berkeley, to act as the special master for this purpose. No further action has been taken with
6 respect to this proposal.

7
8 **7. Procedural History of the Case.**

9 FlatWorld served its Complaint in this action on April 19, 2012. Apple's Answer and
10 Counterclaims were filed on June 11, 2012. A Case Management Conference was held before
11 Judge White on September 21, 2012, at which time the Court entered a case management order
12 with deadlines through the claim construction hearing.

13 On October 5, 2012, FlatWorld served its infringement contentions pursuant to Patent
14 Local Rule 3-1, and served supplemental contentions on October 16 and November 19. On
15 November 30, 2012, Apple served its invalidity contentions pursuant to Patent Local Rule 3-3.
16 The parties have also exchanged lists of claim terms requiring constructions, as well as proposed
17 constructions for those terms and extrinsic evidence, and filed a Joint Claim Construction
18 statement. The claim construction hearing in this matter was originally scheduled for May 7,
19 2013, with a technology tutorial set for April 30, 2013. By Order dated April 24, 2013, the Court
20 vacated these hearing dates and ordered the parties to submit an amended Joint Claim
21 Construction statement. The Court reset the dates of the technology tutorial and claim
22 construction hearing for August 27, 2013, and September 3, 2013, respectively. FlatWorld's
23 amended opening claim construction brief was submitted on Monday, July 8. Apple's amended
24 responsive brief is due on Monday, July 22. FlatWorld's amended reply brief is due on Monday,
25 July 29.

26 Two discovery motions have been filed and briefed in this case. First, on October 10,
27 2012, FlatWorld filed a motion for entry of a protective order. Apple filed a cross-motion for
28

1 entry of a separate protective order with alternative provisions relating to the production of
 2 Apple's source code. These motions were heard on December 4, 2012, after which the parties
 3 jointly filed an agreed protective order.

4 Second, FlatWorld filed a motion to compel discovery on January 31, 2013, seeking
 5 expert reports, deposition transcripts, trial transcripts and other information from previous cases
 6 in which Apple was a party, information regarding Apple's future products, and production of
 7 additional source code. This motion was heard before Judge Laporte on April 9, 2013. Judge
 8 Laporte granted the motion in part, and denied it in part, and ordered the parties to meet and
 9 confer on a special master to resolve the remaining source code production disputes.

10 There is one motion pending in this case. On May 28, Apple filed a motion to disqualify
 11 FlatWorld's counsel, Hagens Berman, or alternatively for a stay of proceedings and referral to a
 12 special master for further discovery regarding the issues underlying Apple's motion to
 13 disqualify. (Dkt. No. 134) This motion is fully briefed and is scheduled for a hearing before the
 14 Court on July 31.

15 By agreement of the parties, the matter has been referred to Magistrate Judge Spero for
 16 mediation. A mediation had been set for July 11, 2013. Judge Spero has vacated this date and
 17 instead directed the parties to appear for a telephonic conference at 9:00am on August 12, 2013.

18 There have been no appellate proceedings in this case.

19 **8. Deadlines in Place Before Reassignment.**

20
 21 The only deadlines or hearing dates currently in place for this case relate to the claim
 22 construction hearing, and are as follows:

23 August 27, 2013: claim construction tutorial

24 September 3, 2013: claim construction hearing

25 **9. Declination to Consent to a Magistrate Judge**

26
 27 The parties do not consent to a magistrate judge for trial.
 28

10. **Immediate Need for a Case Management Conference**

The parties do not believe there is an immediate need for a case management conference; however, the parties respectfully request guidance regarding whether the Court will be rescheduling the upcoming claim construction hearing, and whether the Court plans, as Judge White did, to conduct a separate claim construction technology tutorial.

Apple states that certain issues that it believes might otherwise warrant a case management conference will be addressed at the forthcoming hearing on Apple's Motion to Disqualify Hagens Berman, which is scheduled for argument on July 31, 2013. FlatWorld is not aware of any such issues.

Dated: July 12, 2013

/s/ Michael T. Pieja

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CERTIFICATE OF ATTESTATION

Pursuant to Civil Local Rule 5-1(i), I, Michael Pieja, attest that Mark S. Carlson has concurred in the filing of this document via email dated July 12, 2013.

/s/ Michael T. Pieja
Michael T. Pieja

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on July 12, 2013, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.1(h). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

/s/ Michael T. Pieja
Michael T. Pieja